

REMARKS

In the Claims:

In the office action mailed May 17, 2004, the Examiner indicated that Claim 32 is allowed. Claim 38 is amended so that it no longer depends from cancelled Claim 25, but now depends from Claim 32. No new matter is added by this amendment.

Claims 25-31, 33-37, and 42-43 are cancelled herein without prejudice without prejudice to filing a continuation application containing the same so that the issuance of allowed Claim 32 and Claims 38-41 depending therefrom may be expedited. In canceling claims 25-31, 33-37, and 42-43, the Applicant does not acquiesce in the correctness of the Examiner's rejection of these claims. Nor should the cancellation of these claims be construed as limiting the scope of equivalents of the allowed claims.

Claim Rejections:

35 U.S.C. § 112, second paragraph

Claims 25-28, 33-36, and 38-43 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner alleges that the phrase "neoplastic growth in tumor cells" is indefinite.

Claims 25-28, 33-36, and 42-43 are cancelled herein without prejudice or disclaimer. Claim 38 is amended herein and now depends from allowed Claim 32, which does not contain the limitation "neoplastic growth in tumor cells." Claims 39-41 depend from Claim 38 and thus also do no contain the limitation "neoplastic growth in tumor cells." Thus, Applicants have overcome this ground of rejection and respectfully request that it be withdrawn.

35 U.S.C. § 102(e)

Claims 25-28, 33-36 and 38-43 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sheppard *et al.*, U.S. Patent No. 6,197,930.

Claims 25-28, 33-36, and 42-43 are cancelled herein without prejudice or disclaimer.

Claim 38 is amended and now depends from allowed Claim 32. In the office action mailed September 9, 2003, under the discussion of the rejection under 35 U.S.C. § 102(e), based on the Sheppard Reference, the Examiner stated:

Claim 32 is not included in the rejection because it encompasses the isolated nucleic acid comprising the nucleic acid sequence of SEQ ID NO:41, and the nucleic acid of SEQ ID NO:41 has a different nucleic acid sequence at the 5' and 3' ends compared to nucleic acid of Sheppard *et al.*, and therefore SEQ ID NO:41 is neither anticipated nor obvious.

Amended Claims 39-41 depend from Claim 38. Thus, Applicants have overcome this ground of rejection and respectfully request that it be withdrawn.

35 U.S.C. § 112, first paragraph

Claims 25-26, 35, 36, and 38-43 are rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 25-26, 35, 36, and 42-43 are cancelled herein without prejudice or disclaimer.

Neither Claim 32 nor Claim 38 is rejected for lack of written description. Amended Claims 39-41 depend from Claim 38. From page 66, line 35 to page 68, line 35, the specification describes selection and use of an appropriate replicable vector as well as examples of appropriate host cells. Thus, Applicants respectfully submit that amended Claims 38-41 are adequately described in the present application and respectfully request this ground of rejection be withdrawn.

Appl. No. 09/944,944
Response dated July 19, 2004
Reply to Office Action of May 17, 2004

CONCLUSION

Currently pending Claims 32 and 38-41 are patentable. Applicants respectfully request the Examiner grant allowance of this application. The Examiner is invited to contact the undersigned attorney for the Applicant via telephone if such communication would expedite this application.

Respectfully submitted,

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